

DEPARTMENT OF CONSUMER & REGULATORY AFFAIRS

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NOTICE OF FINAL RULEMAKING

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The Acting Director, Department of Consumer and Regulatory Affairs, pursuant to the authority set forth in Sec. 10 of the Holding Company System Act of 1993, effective October 21, 1993, D.C. Law 10-44, D.C. Code Sec. 35-3701 note; Reorganization Plan Number 1 of 1983; and Mayor's Order No. 94-54, hereby gives notice of the adoption of amendments of chapter 16 of Title 26 DCMR.

The proposed rules were published at 41 DCR 1319. No comments were received during the comment period and no changes have been made to the text of the rules. The rules will be effective upon publication of this notice in the D.C. Register. These rules were adopted on April 13, 1994.

The amendments include deleting the current Chapter 16 in its entirety and adding the following:

1600 PURPOSE

1600.1 The purposes of these regulations are: to set forth rules and procedural requirements which the Superintendent deems necessary to carry out the provisions of the Holding Company System Regulatory Act of the 1983, D.C. Law 10-4, hereinafter referred to as "the Act". The information called for by these regulations is hereby declared to be necessary and appropriate in the public interest and for the protection of the policyholders in the District of Columbia.

1601 SEVERABILITY CLAUSE

1601.1 If any of these regulations, or the application thereof to any person or circumstance, is held invalid, such determination shall not affect other provisions or applications of these regulations which can given effect without the invalid provision or application, and to that end the provisions of these regulations are severable.

1602 FORMS - GENERAL REQUIREMENTS

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1602 FORMS - GENERAL REQUIREMENTS

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- 1602.1 Forms A, B, C, and D, set forth in the appendix to chapter, are intended to be guides in the preparation of the statements required by Sections 3, 4, and 5 of this Act. They are not intended to be blank forms which are to be filled in. These statements filed shall contain the numbers and captions of all items, but the text of the items may be omitted provided the answers thereto are prepared in such a manner as to indicate clearly the scope and coverage of the items. All instructions, whether appearing under the items of the form or elsewhere therein, are to be omitted. Unless expressly provided otherwise, if any item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect shall be made.
- 1602.2 Two complete copies of each statement including exhibits and all other papers and documents filed as a part thereof, shall be filed with Superintendent by personal delivery or mail addressed to: Insurance Superintendent of the District of Columbia, One Judiciary Square, 441 4th Street N.W., Box 65, 8th Floor, Washington, D.C. 20001. Attention: Chief Financial Officer. A copy of Form C shall be filed in each jurisdiction in which an insurer is authorized to do business, if the Superintendent of that state has notified the insurer of its request in writing, in which case the insurer has (60) days from receipt of the notice to file such form. At least one of the copies shall be manually signed in a manner prescribed on the form. Unsigned copies shall be conformed. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of such power of attorney or other authority shall also be filed with the statement.
- 1602.3 Statements should be prepared on paper 8 1/2"x11" (or 8 1/2"x14") in size and preferably bound at the top or the top left-hand corner. Exhibits and financial statements, unless specifically prepared for the filing, may be submitted in their original size. All copies of any statement, financial statements, or exhibits shall be clear, easily readable and suitable for photocopying. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies. Statements shall be in the English language and monetary values shall be stated in U.S. currency. If any exhibit or other paper or document filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language and any monetary value shown in a foreign currency normally shall be converted into United States currency.

**1603 FORMS - INCORPORATION BY REFERENCE, SUMMARIES AND OMISSION**

1603.1 Information required by any item of Form A, Form B or Form D may be incorporated by reference in answer or partial answer to any other item. Information contained in any financial statement, annual report, proxy statement filed with a governmental authority, or any other document may be incorporated by reference in answer or partial answer to any item of Form A, Form B or Form D provided such document or paper is filed as an exhibit to the statement. Excerpts of documents may be filed as exhibits if the documents are extensive. Documents currently on file with the Superintendent which were filed within three years need not be attached as exhibits. References to information contained in exhibits or in documents already on file shall clearly identify the material and shall specifically indicate that such material is to be incorporated by reference in answer to the item. Matter shall not be incorporated by reference in any case where such incorporation would render the statement incomplete, unclear or confusing.

1603.2 Where an item requires a summary or outline of the provisions of any document, only a brief statement shall be made as to the pertinent provisions of the document. In addition to such statement, the summary or outline may incorporate by reference particular parts of any exhibit or document currently on file with the Superintendent which was filed within three years and may be qualified in its entirety by such reference. In any case where two or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, a copy of only one of such documents need be filed with a schedule identifying the omitted documents and setting forth the material details in which such documents differ from the documents a copy of which is filed.

**1604 FORMS - INFORMATION UNKNOWN OR UNAVAILABLE AND EXTENSION OF TIME TO FURNISH**

1604.1 Information required need be given only insofar as it is known or reasonably available to the person filing the statement. If any required information is unknown and not reasonable available to the person filing, either because the obtaining thereof would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the person filing, the information may be omitted, subject to the following conditions:

- (a) The person filing shall give such information on the subject as it possesses or can acquire without unreasonable effort or expense, together with the sources thereof; and
- (b) The person filing shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to such person for the information.

1604.2 If it is impractical to furnish any required information, document or report at the time it is required to be filed, there may be filed with the Superintendent as a separate document

- (a) identifying the information, document or report in question;
- (b) stating why the filing thereof at the time required is impractical; and
- (c) requesting an extension of time for filing the information, document or report to specified date. The request for extension shall be deemed granted unless the Superintendent within (60) days after receipt thereof enters an order denying the request.

**1605 FORMS - ADDITIONAL INFORMATION AND EXHIBITS**

1605.1 In addition to the information expressly required to be included in Form A, Form B, Form C and Form D, there shall be added such further material information, if any, as may be necessary to make the information contained therein not misleading. The person filing may also file such exhibits as it may desire in addition to those expressly required by the statement. Such exhibits shall be so marked as to indicate clearly the subject matters to which they refer. Changes to Forms A, B, C, and D shall include on the top of the cover page the phrase: "Changes No. (insert number) to" and shall indicate the date of the change and not the date of the original filing.

**1606 SUBSIDIARIES OF DOMESTIC INSURERS**

1606.1 The authority to invest in subsidiaries under Section 3 of the Act is in addition to any authority to invest in subsidiaries which may be contained in any other provision of the Insurance Code.

**1607 ACQUISITION OF CONTROL - STATEMENT FILING**

1607.1 A person required to file a statement pursuant to Section 4 of the Act shall furnish the required information on Form A, hereby made a part of this regulation.

**1608 AMENDMENTS TO FORM A**

1608.1 The applicant shall promptly advise the Superintendent of any changes in the information so furnished on Form A arising subsequent to the date upon which such information was furnished but prior to the Commissioner's disposition of the application.

**1609 ACQUISITION OF SECTION 4(b) INSURERS**

1609.1 If the person being acquired is deemed to be a "domestic insurer" solely because of the provisions of Section 4(b) of the Act, the name of the domestic insurer on the cover page should be indicated as follows:

"ABC Insurance Company, a subsidiary of XYZ Holding Company".

- 1609.2 Where a Section 4(b) insurer is being acquired, references to the "the insurer" contained in Form A shall refer to both the domestic subsidiary insurer and the person being acquired.

**1610 ANNUAL REGISTRATION OF INSURERS - STATEMENT FILING**

- 1610.1 An insurer required to file an annual registration statement pursuant to Section 6 of the Act shall furnish the required information on Form B, hereby made a part of these regulations.

**1611 SUMMARY OF REGISTRATION - STATEMENT FILING**

- 1611.1 An insurer required to file an annual registration statement pursuant to Section 6 of the Act shall also furnish the required information on Form C, hereby made a part of these regulations. An insurer shall file a copy of Form C in each jurisdiction in which the insurer is authorized to do business, if requested by the Superintendent of that jurisdiction.

**1612 AMENDMENTS TO FORM B (Reserved)**

**1613 ALTERNATIVE AND CONSOLIDATED REGISTRATIONS**

- 1613.1 Any authorized insurer may file a registration statement on behalf of any affiliated insurer or insurers which are required to register under Section 6 of the Act. A registration statement may include information not required by the Act regarding any insurer in the insurance holding company system even if such insurer is not authorized to do business in this jurisdiction. In lieu of filing a registration statement on Form B, the authorized insurer may file a copy of the registration statement or similar report which it is required to file in its jurisdiction of domicile, provide:

- (a) the statement or report contains substantially similar information required to be furnished on Form B; and
- (b) the filing insurer is the principal insurance company in the insurance holding company system.

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1613.2 The question of whether the filing insurer is the principal insurance company in the insurance holding company system is a question of fact and an insurer filing a registration statement or report in lieu of Form B on behalf of an affiliated insurer, shall set forth a brief statement of facts which will substantiate the filing insurer's claim that it, in fact, is the principal insurer in the insurance holding company system.

1613.3 With the prior approval of the Superintendent, an unauthorized insurer may follow any of the procedures which could be done by an authorized insurer under Section 1613.1 above.

1613.4 Any insurer may take advantage of the provisions of Section 6(h) or 6(i) of the Act without obtaining the prior approval of the Superintendent. The Superintendent, however, reserves the right to require individual filings if he or she deems such filings necessary in the interest of clarity, ease of administration or the public good.

#### 1614 DISCLAIMERS AND TERMINATION OF REGISTRATION

1614.1 A disclaimer of affiliation or a request for termination of registration claiming that a person does not, or will not upon the taking of some proposed action, control another person (hereinafter referred to as the "subject") shall contain the following information:

- (a) the number of authorized, issued and outstanding voting securities of the subject;
- (b) with respect to the person whose control is denied and all affiliates of such person, the number and percentage of shares of the subject's voting securities which are held of record or known to be beneficially owned, and the number of such shares concerning which there is a right to acquire, directly or indirectly;
- (c) all material relationships and bases for affiliation between the subject and the person whose control is denied and all affiliates of such person;
- (d) A statement explaining why such person should not be considered to control the subject.

1614.2 A request for termination of registration shall be deemed to have been granted unless the Superintendent, within 30 days after he receives the request, notifies the registrant otherwise.

1615 Transactions Subject to Prior Notice - Notice Filing

1615.1 An insurer required to give notice of a proposed transaction pursuant to Section 7 of the Act shall furnish the required information on Form D, hereby made a part of these regulations.

1616 EXTRAORDINARY DIVIDENDS AND OTHER DISTRIBUTIONS

1616.1 Requests for approval of extraordinary dividends or any other extraordinary distribution to shareholders shall include the following:

- (a) The amount of the proposed dividend;
- (b) The date established for payment of the dividend;
- (c) A statement as to whether the dividend is to be in cash or other property and, if in property, a description thereof, its cost, and its fair market value together with an explanation of the basis for valuation;
- (d) A copy of the calculations determining that the proposed dividend is extraordinary. -The work paper shall include the following information:
  - (1) The amounts, dates and form of payment of all dividends or distributions (including regular dividends but excluding distributions of the insurers own securities) paid within the period of 12 consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year.
  - (2) Surplus as regards policyholders (total capital and surplus) as of the 31st day of December next preceding;
  - (3) If the insurer is a life insurer, the net gain from operations for the 12 month period ending the 31 st day of December next preceding;
  - (4) If the insurer is not a life insurer, the net income less realized capital gains for the 12-month period ending the 31st day of December next preceding and the two preceding 12-month periods; and



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(5) If the insurer is not a life insurer, the dividend paid to stockholders excluding distributions of the insurer's own securities in the preceding two calendar years.

(e) A balance sheet and statement of income for the period intervening from the last annual statement filed with the Superintendent and the end of the month preceding the month in which the request for dividend approval is submitted; and

(f) A brief statement as to the effect of the proposed dividend upon the insurer's surplus and the reasonableness of surplus in relation to insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs.

1616.2 Subject to subsection (b) of Section 7 of the Act, each registered insurer shall report to the Commissioner all dividends and other distributions to shareholders within 15 business days following the declaration thereof, including the same information required by sections 1616.1 (d) (1)-(5).

#### 1617 ADEQUACY OF SURPLUS

1617.1 The factors set forth in Section 7(d) of the Act are not intended to be an exhaustive list. In determining the adequacy and reasonableness of an insurer's surplus no single factor is necessarily controlling. The Commissioner, instead, will consider the net effect of all of these factors plus other factors bearing on the financial condition of the insurer. In comparing the surplus maintained by other insurers, the Superintendent will consider the extent to which each of these factors varies from company to company and in determining the quality and liquidity of investments in subsidiaries, the Superintendent will consider the individual subsidiary and may discount or disallow its valuation to the extent that the individual investments so warrant.

#### 1699 DEFINITIONS

1699.1 The following words and phrases shall have the meaning ascribed in this section. Unless the context otherwise requires, other terms found in these regulations and in Section 2 of the Act are used as defined in the said Section 2. Other nomenclature or terminology is according to the Insurance Code, or industry usage if not defined by Code.

"Executive officer" means chief executive officer, chief operating officer, chief financial officer, treasurer, secretary, controller, and any other individual performing functions corresponding to those performed by the foregoing officers under whatever title.

"Foreign insurer" shall include an alien insurer except where clearly noted otherwise.

"Material Transaction" means all sales, purchases, exchanges, loans, extensions of credit, investments, retirement of indebtedness, pledging of assets as security, transactions not in the ordinary course of business, guarantees or undertakings for the benefit of a subsidiary of affiliate, management contracts, service contracts, cost-sharing arrangements, and all reinsurance agreements that are in the amount of \$25,000 or more; provided, however, that any series of transactions of similar nature which, in the aggregate, total \$25,000 or in any 12-month period, shall be considered as one transaction for the purpose of this subsection.

"Ultimate controlling person" means that person which is not controlled by any other person.